

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Public Adjuster
License of Donald Herman Schuett, Jr.,
and the Unlicensed Public Adjuster
Activities of State Adjusters, LLC

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Ann O'Reilly at 9:30 a.m. on August 1, 2, and 3, 2012, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota, pursuant to a Notice and Order for Hearing, dated November 14, 2011. The parties filed post-hearing submissions, and the record of the contested case proceeding closed on August 28, 2012.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Commerce ("Department"). Donald Herman Schuett, Jr. ("Schuett") appeared on behalf of himself and State Adjusters, LLC ("State Adjusters"), collectively referred to herein as "Respondents."

STATEMENT OF THE ISSUE

1. Whether Respondents engaged in an unfair method of competition and unfair and deceptive acts or practices; improperly withheld, misappropriated, or converted money received in the course of doing insurance business; engaged in or attempted to engage in a fraudulent transaction with respect to a claim or loss Respondents were adjusting; or used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness, or financial irresponsibility, in conducting insurance business in the State of Minnesota in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2008); 72A.20, subd. 18(a) and (b) (2008); and 72B.08, subd. 1(c), (d), (e), and (g) (2008).

2. Whether Respondents breached their obligations to perform insurance adjustment services on behalf of clients and abandoned insurance claims before they were finalized but after they collected commissions; and whether Respondents failed to respond to communications from clients and/or insurance companies, thereby engaging in unfair or deceptive acts or practices or demonstrating incompetency or untrustworthiness to act as insurance adjusters in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 72A.20, subd. 12(2) (2010); and 72B.08, subd. 1(3), (7), and (10) (2010).

3. Whether Respondents failed to pay agents hired to assist in adjusting and appraising insurance claims, including failing to satisfy judgments obtained against Schuett and his related business entities, and failing to pay agents who performed professional services at his request, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010) and 72B.08, subd. 1(7) and (1) (2010).

4. Whether Respondents made false statements and representations to clients regarding diligence in adjusting claims or the availability of coverage for claims in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010) and 72B.08, subd. 1(7) and (1) (2010).

5. Whether Schuett failed to maintain a mandatory \$10,000 bond in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) (2010); 72B.041, subd. 3 (2010); and 72B.08, subd. 1(3) and (1) (2010).

6. Whether Schuett continued to act and hold himself out as a public adjuster at a time when his public adjuster license was suspended in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) (2010); 72B.041, subd. 3 (2010); and 72B.08, subd. 1(3) (2010).

7. Whether State Adjusters acted and held itself out as a public adjuster in the State of Minnesota without a valid license in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) (2010); 72B.02, subd. 6 (2010); 72B.03 (2010); and 72B.08, subd. 1(3) (2010).

8. Whether Schuett violated insurance laws of the State of Iowa and failed to report an Iowa administrative action to the Commissioner within 30 days of the final disposition of the matter in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) (2010); 72B.08, subd. 1(3) (2010); and 72B.107 (2010).

9. Whether Respondents engaged in unfair or deceptive acts or practices by disseminating statements with respect to the business of insurance adjusting, or with respect to any person in the conduct of the Respondents' insurance adjusting business which were untrue, deceptive, or misleading in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) (2008) and (2010); 72A.20, subd. 2 (2008) and (2010); 72B.08, subd. 1(3) (2009) and (2010).

10. Whether Schuett engaged in acts or practices which demonstrate that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the insurance adjuster license granted by the Commissioner in violation of Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

11. Whether the Department should impose disciplinary sanctions upon Schuett and/or State Adjusters pursuant to Minn. Stat. § 45.027, subs. 6 and 7 (2010).

Based upon the evidence in the hearing record, the Administrative Law Judge (“ALJ”) makes the following:

FINDINGS OF FACT

1. On June 9, 2009, the Department issued Schuett a resident public adjuster license number 40163264.¹

2. A “public adjuster” is defined as a person who, for compensation or any other thing of value on behalf of an insured:

- (1) acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
- (2) advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
- (3) directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.²

3. State Adjusters is not licensed, and has never been licensed, as a public adjuster by the Department.³

4. Schuett is the President of State Adjusters.⁴ Schuett admits the he is “DBA State Adjusters, LLC” or “doing business as” State Adjusters, LLC.⁵

Count I: Misappropriation of Paloranta Insurance Proceeds

5. In approximately 2009, the home of Jeff Paloranta (“Paloranta”) suffered damage cause by ice and snow, which was covered by Paloranta’s homeowner’s insurance coverage.⁶

¹ Ex. 30 at Doc. No. 000652. See also, Ex. 33 at Respondents’ Responses to Requests for Admissions No. 1.

² Minn. Stat. § 72B.02, subd. 5 (2010).

³ Testimony of J. Cameron Jenkins.

⁴ Ex. 1 at Doc. No. 000761.

⁵ Ex. 34 at Schuett’s Answer to Interrogatory No. 1.

⁶ Testimony of Jeff Paloranta.

6. Ben Johnson (“Johnson”), a licensed public adjuster solicitor,⁷ acting on behalf of State Adjusters, approached Paloranta and solicited the insurance adjuster services of State Adjusters.⁸

7. Paloranta eventually agreed to hire State Adjusters and executed a public adjuster agreement with State Adjusters (“Paloranta Agreement”).⁹ The date of the Paloranta Agreement is set forth on the document as November 17, 2009.¹⁰

8. Johnson executed the contract on behalf of State Adjusters.¹¹

9. The Paloranta Agreement provided that, in exchange for providing insurance adjustment services, State Adjusters would receive a contingency fee of 10 percent of the replacement cost value paid by State Farm Insurance Company (“State Farm”) to Paloranta as a result of the claim, plus necessary expenses.¹²

10. Schuett, on behalf of himself and State Adjusters, met with representatives of State Farm and adjusted Paloranta’s insurance claim.¹³

11. At the time that Paloranta entered into the public adjuster agreement with State Adjusters, Paloranta was in default on his mortgage payments and the property was in the foreclosure process.¹⁴ Johnson was aware that the property was in foreclosure.¹⁵

12. On or about March 30, 2010, State Farm sent Paloranta a check in the amount of \$41,896.86 in settlement of the insurance claim.¹⁶ The check was made payable to: (1) Paloranta; (2) Chase Home Finance, LLC, a division of JPMorgan Chase Bank, N.A., and its successors and assigns (“Chase”) (Paloranta’s mortgage company); and (3) State Adjusters.¹⁷

13. As the mortgage holder on the real property that was the subject of the insurance claim, Chase was listed on the check as a loss payee.¹⁸

⁷ A public adjuster solicitor is defined as “[A]ny money, commission or any other thing of value solicits in any manner or aids in securing for a public adjuster any contract or agreement for the adjustment of a loss.” Minn. Stat. § 72B.02, subd. 8 (2010). It is unclear whether Johnson was licensed as a public adjuster solicitor at the time that Johnson executed the Paloranta agreement on behalf of State Adjusters.

⁸ *Id.*

⁹ Ex. 1; Test. of J. Paloranta.

¹⁰ Ex. 1.

¹¹ Ex. 1; Testimony of Ben Johnson.

¹² *Id.*

¹³ Test. of B. Johnson; Ex. 36 at p. 1/14.

¹⁴ Test. of J. Paloranta; Exs. 5 and 7.

¹⁵ Test. of B. Johnson.

¹⁶ Ex. 3.

¹⁷ *Id.*

¹⁸ Ex. 3; Testimony of Michelle Guyton.

14. Because the check was written jointly to Paloranta, Chase, and State Adjusters, endorsements from all three parties were required to cash the check.¹⁹ Indeed, on the back of the check, in the area where endorsement is required, the check read: "Must Be Endorsed By All Payees."²⁰

15. Upon receipt of the check, Paloranta called Chase to determine how to get the check endorsed by Chase so that he could cash it.²¹ Paloranta was "bounced from one department to another" and did not receive any answer from Chase.²²

16. Paloranta then contacted Schuett, who told Paloranta to endorse the check and give it to him (Schuett), and that Schuett would take care of it since he had experience with these types of transactions.²³ Paloranta endorsed the check and gave it to Schuett.²⁴ At the time Paloranta endorsed the check, Paloranta asserts there were no other signatures on the check.²⁵

17. A sheriff's sale of the Paloranta property occurred on or about April 2010.²⁶

18. Schuett was made aware of the foreclosure sale by an email from Johnson to Schuett dated April 14, 2010, in which Johnson writes:

Just talked with Jeff [Paloranta] and he is having the Sheriff's sale for his property today – uhg. Just when you think all the bases have been covered. Call him. He is floundering and obviously we need to get our fees from this. [T]he check from the insurance co. is in his truck, so he has not done anything with it yet.²⁷

19. On or about May 21, 2010, the State Farm insurance check, containing the signatures of Paloranta, Schuett, and State Adjusters was cashed and the \$41,896.86 proceeds were deposited into the TCF National Bank account belonging to State Adjusters, LLC.²⁸

20. Schuett admits to depositing the check into State Adjusters' TCF Bank account.²⁹

¹⁹ Ex. 3.

²⁰ *Id.*

²¹ Test. of J. Paloranta.

²² *Id.*

²³ *Id.*; Ex. 5.

²⁴ *Id.*

²⁵ Test. of J. Paloranta.

²⁶ Ex. 7; Ex. 36 at p. 18/19 (Email from Johnson to Schuett, dated April 14, 2010).

²⁷ Ex. 36 at pp. 18 and 19.

²⁸ Ex. 4.

²⁹ Ex. 34 at Schuett's Answer to Interrogatory No. 2.

21. The check does not contain any signatures purporting to be from Chase.³⁰

22. Chase was not aware of the check at the time it was cashed; Chase did not endorse the check; Chase did not give authorization to any party to cash the check; Chase did not obtain any proceeds from the check; and Chase did not give authorization for Paloranta, State Adjusters, or Schuett to keep the proceeds from the check.³¹

23. Paloranta received four cashier's checks or money orders from Schuett in the amount of \$5,000 each (for a total of \$20,000) from the \$41,896.86 State Farm insurance proceeds.³²

24. Under the Paloranta Agreement, State Adjusters was to receive a fee in the amount of 10 percent of the insurance proceeds, or approximately \$4,189.68.³³

25. However, all proceeds from the State Farm check were deposited into State Adjuster's TCF Bank account and, aside from the \$20,000 paid to Paloranta, the rest of the proceeds remain unaccounted for by Schuett or State Adjusters.³⁴

26. Johnson testified that he did not receive any proceeds from the State Farm insurance settlement, nor did he receive any commission from State Adjusters for his solicitation of Paloranta's insurance claim.³⁵ Respondents provided no evidence to rebut Johnson's testimony as to this fact.

27. Schuett and State Adjusters have failed to provide any evidence as to the payment of the insurance proceeds to Paloranta or any other party.

***Count II: Breach of Obligations of a Licensed Public Adjuster
and Abandonment of Claims
and
County IV: False Statements and Misrepresentations to Clients***

A. *Zuelke Claim*

28. On May 8, 2010, Daryl Zuelke ("Zuelke") executed a public adjuster agreement with "Donald H. Schuett DBA State Adjusters, LLC" ("Zuelke Agreement"), whereby Schuett agreed to advise and assist in the adjustment of an insurance claim with Auto Owners Insurance Company ("Auto Owners") arising "from the insured's loss pertaining to fire/smoke..., which occurred on 4/8/2010, at xxxx Crest Drive, Chaska, MN 55318."³⁶

³⁰ Ex. 8 at Doc. No. 000569.

³¹ Test. of M. Guyton; Ex. 9.

³² Test. of J. Paloranta; See also, Ex. 7.

³³ Ex. 1; Test. of J. Paloranta.

³⁴ Ex. 4; Test. of J. Paloranta.

³⁵ Test. of B. Johnson.

³⁶ Ex. 1 at Doc. No. 000765.

29. The Zuelke Agreement provided that Schuett would receive “a contingency fee of ten percent (10%) of the Replacement Cost Value (hereafter “RCV”) paid by the insured’s insurance company in settlement of the loss, plus necessary expenses.”³⁷

30. Schuett and State Adjusters undertook the adjustment of Zuelke’s claim and facilitated the appraisal process as provided for in Zuelke’s insurance policy.³⁸

31. At first, Zuelke was pleased with the work of Schuett and State Adjusters.³⁹ As a result of Schuett’s services, Zuelke received two very favorable appraisal awards: the first for losses to his dwelling, dated August 27, 2010, in the amount of \$39,213.40 (RCV); and the second (“Additional Appraisal Award”), for losses related to contents and living expenses, dated November 19, 2010, in the amount of \$61,738.90 (RCV).⁴⁰ The Additional Appraisal Award provided that Zuelke was also to receive Allowable Living Expenses (“ALE”) through December 31, 2010.⁴¹ Accordingly, Zuelke reasonably understood ALE and the collection of the appraisal award to be part of the adjusted insurance claims and services which he had retained Schuett and State Adjusters to perform.⁴²

32. On December 2, 2010, Schuett sent an email to Zuelke stating that the insurance company was cutting a check for “about \$30,000,” and there was a balance of “\$3400+ about \$11,000” to be collected “next week.”⁴³ Zuelke understood that Schuett would be collecting these amounts on behalf of Zuelke as part of the agreement.⁴⁴

33. As a result, on or about December 3, 2010, Zuelke paid State Adjusters’ invoice for commissions totaling \$9,615.14, representing roughly 10 percent of the appraisal awards for the dwelling and content claims.⁴⁵

34. Thereafter, Zuelke requested Schuett’s assistance on collecting the remainder of the content award from the insurance company and the amounts claimed for ALE.⁴⁶ From December 8, 2010 through January 30, 2011, Zuelke sent numerous emails and made numerous telephone calls to Schuett pleading for assistance on collecting the remaining amounts owed by the insurance company pursuant to the appraisal awards.⁴⁷ Schuett failed to respond to Zuelke’s correspondence, with the

³⁷ *Id.*

³⁸ Testimony of Daryl Zuelke.

³⁹ *Id.*

⁴⁰ Ex. 114.

⁴¹ *Id.*

⁴² Test. of. D. Zuelke.

⁴³ Ex. 10 at Doc. No. 001279.

⁴⁴ Test. of D. Zuelke.

⁴⁵ Exs. 115 and 116; Test. of D. Zuelke.

⁴⁶ Ex. 10; Test. of D. Zuelke.

⁴⁷ Ex. 10, Doc. Nos. 001273-001279; Test. of D. Zuelke.

exception of one email in which Schuett claims to have taken off a few weeks due to "some personal issues."⁴⁸

35. Due to Respondents' failure to communicate and finalize the claim, Zuelke was forced to terminate the agreement effective January 30, 2011.⁴⁹ The termination letter states, as follows:

As of the date of this letter, we are terminating your services as our public adjuster as outlined in our agreement of May 8, 2010. You have demonstrated a habitual and continual lack of response and action to finish the business of recovering the compensation awarded to us from Auto-Owners Insurance. This includes the balance of the damages to contents and the last two months of the living allowances even though you have had the information necessary to complete this claim work. We have not received return telephone calls and only one ineffective email from you regarding our specific requests to complete our claim work for two months. You have received a substantial payment amount from us for your work, some of which remains incomplete.

It has also come to my attention that you have failed to pay personnel that you have engaged to work for you in inventory work and processing for this claim. We feel that we can no longer trust you to follow through with your duties to complete the claims recovery work and have no choice but to terminate our agreement.⁵⁰

36. It took Zuelke four attempts to deliver the termination letter because Respondents refused to accept delivery.⁵¹ During this time, Auto Owners refused to correspond with Zuelke because Zuelke was purportedly represented by Respondents as his insurance adjuster, thereby further delaying the receipt of insurance proceeds owed to Zuelke under the policy.⁵²

37. After terminating the agreement with Respondents, Zuelke retained Ben Johnson as a public adjuster⁵³ to obtain the remaining amounts owed by Auto-Owners.⁵⁴ Johnson secured a portion of the amounts owed to Zuelke, but it was less than the amounts he understood he was awarded in the appraisal process.⁵⁵ In addition, Zuelke had to pay Johnson an additional commission on that amount, resulting in Zuelke incurring additional commission costs on his claim.⁵⁶

⁴⁸ Ex. 10, Doc. Nos. 001273-001279.

⁴⁹ Ex. 10, Doc. No. 001268.

⁵⁰ *Id.*; Test. of D. Zuelke; Ex. 10 at Doc. Nos. 001296 - 001299.

⁵¹ Ex. 10 at Doc. No. 001280; Test. of D. Zuelke.

⁵² Test. of D. Zuelke.

⁵³ By this time, Johnson had received his public adjuster license but was not working for State Adjusters as a public adjuster. See Test. of B. Johnson.

⁵⁴ Test. of D. Zuelke.

⁵⁵ *Id.*

⁵⁶ Zuelke Test.; see *a/so* Johnson Test.; Ex. 10 at Doc. Nos. 001280 - 001288.

38. In short, once Respondents were paid commissions on December 3, 2010, they abandoned the remaining details of the Zuelke claim, failed to respond to or communicate with Zuelke, and failed to pursue the remaining amounts owed to Zuelke for the adjusted claim.⁵⁷

39. In addition, after paying Respondents the \$9,615.14 commission, Zuelke was notified that at least two agents hired by Respondents to assist in adjusting the Zuelke losses (Paul Norcia and Cara Kvanbeck) had not been paid for their services.⁵⁸ Schuett had not advised Zuelke of the amounts owed to these individuals, or of Zuelke's responsibility to pay these agents.⁵⁹

40. While the Zuelke Agreement provided that Zuelke was responsible for the payment of "necessary expenses," Respondents had never notified Zuelke of the cost of these services or obtained approval for the hiring of these agents.⁶⁰ Zuelke subsequently paid Paul Norcia, an appraiser, \$1,625 for his services.⁶¹ Zuelke did not pay Kvanbeck because he did not agree to incur this expense and he was not a party to Schuett's agreement with Kvanbeck.⁶²

B. Olivier Claim

41. On October 7, 2010, Sean and Esther Olivier (the "Oliviers") executed a public adjuster agreement with Respondents ("Olivier Agreement"), whereby Respondents agreed to advise and assist the Oliviers in the adjustment of an insurance claim with State Farm arising out of wind damage to the Olivier's home.⁶³ A tree had fallen on the Olivier's home in September 2010 and caused substantial damage.⁶⁴

42. After hiring Respondents, the Oliviers discovered that Respondents were not diligently pursuing their claims.⁶⁵ A month passed and the Oliviers had not heard from the Respondents.⁶⁶ The Olivier's emails to Schuett bounced back and their calls were not returned.⁶⁷ When Schuett finally responded on November 10, 2010, he stated that he was working diligently on the case and blamed State Farm for the delay.⁶⁸

43. In response, Esther Olivier sent Schuett the following email:

⁵⁷ Test. of D. Zuelke.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*; See also, Ex. 10 at Doc. No. 001289.

⁶² Test. of D. Zuelke.

⁶³ Testimony of Esther Olivier; Ex. 1 at Doc. No. 000474; Ex. 12 at Doc. No. 00626.

⁶⁴ Test. of E. Olivier.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*; Ex. 12.

⁶⁸ Test. of E. Olivier. See also Ex. 13.

Mr. Schuett:

I just have to say as I see this email in my box and realize that it's been near a month since you were at the house that I am HIGHLY disappointed, if not disgusted, at the level of customer service in regards to maintaining communication. Snow will fly soon, our house is not repaired, and we sit with no word from anyone. I recommend that this be an area for improvement in your future business dealings.⁶⁹

44. The State Farm Claim Service record indicates that Schuett had, indeed, contacted State Farm on November 1, November 3, November 4, and several times on November 9, 2010.⁷⁰ However, this information was apparently not communicated to the Oliviers by Schuett.⁷¹

45. On November 12, 2010, the Oliviers instructed State Farm not to communicate with Schuett.⁷² On November 17, 2010, after finally discussing the situation with Schuett, the Oliviers instructed State Farm that they could, again, begin communications with Schuett.⁷³

46. On December 2, 2010, a second inspection of the Olivier property occurred in which Schuett was present.⁷⁴ From December 21, 2010 through March 2, 2011, State Farm and the Oliviers left several messages with Schuett in an effort to process the claim, but Schuett did not return their calls.⁷⁵ All this while, the Oliviers were left with a hole in the side of their home, covered only by a temporary repair, exposing them to the winter elements.⁷⁶ Accordingly, the Oliviers were anxious to get the insurance claim resolved.⁷⁷

47. On March 2, 2011, Esther Olivier contacted State Farm to advise them that she had not heard from Schuett.⁷⁸ State Farm advised her that Schuett had also failed to return their calls.⁷⁹

48. On March 11, 2011, the Oliviers advised State Farm that they were terminating their relationship with Respondents.⁸⁰ The Oliviers then hired a new adjuster and, as of the date of the hearing, had still not settled their claim with State Farm.⁸¹

⁶⁹ Ex. 13.

⁷⁰ Ex. 14.

⁷¹ Ex. 14; Test. of E. Olivier.

⁷² Ex. 14.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*; Test. of E. Olivier.

⁷⁶ Test. of E. Olivier.

⁷⁷ *Id.*

⁷⁸ Ex. 14.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Test. of E. Olivier.

49. On May 5, 2011, Esther Olivier sent a letter to Schuett formally terminating the Olivier Agreement.⁸² The letter states, in part:

As you know, a portion of the claim has not been settled, and immediate resolution of the claim is essential. We have left numerous phone and email messages to you, which have been ignored. We have heard nothing from you since your visit to our home in December 2010. After leaving numerous messages himself following your meeting, State Farm adjuster, Scott Trabold, finally contacted us to see if we had heard anything from you before submitting his estimate without your input.

This letter is to notify you that we are terminating our agreement with you, and are canceling our contract with State Adjusters, LLC. This action is based on your abandonment of the contract, your refusal to respond to our attempts to contact you, and the extended delay in handling our claim.⁸³

50. On May 5, 2011, the Oliviers filed a complaint with the Department against Respondents for abandonment of the contract, refusal to respond to Olivier's repeated attempts to contact Respondents, and extended delay in handling their claim.⁸⁴

51. Notably, the Oliviers were initially offered \$14,324.97 by State Farm for their storm damage claim.⁸⁵ However, as a result of the second inspection initiated by Respondents, State Farm's settlement authority was extended to \$30,276.63.⁸⁶

C. *Kahnke Brothers, Inc. Claim*

52. Jeff Kahnke and Warren Kahnke ("Kahke") own and operate Kahnke Brothers, Inc. ("Kahke Brothers"), a commercial landscaping and irrigation business.⁸⁷ In February or March 2010, the roof of their cold storage building and shop collapsed under the weight of snow and ice.⁸⁸ Kahnke Brothers suffered losses both to its building and its contents, including equipment and goods damaged by the collapse.⁸⁹

53. On March 11, 2010, Kahnke Brothers executed a public adjusters agreement with Respondents ("Kahnke Agreement") whereby Respondents agreed "to advise and assist in the adjustment of the insurance claim with General Casualty Insurance Company...arising from insured's loss pertaining to weight of Ice and Snow...which occurred on 2/2010, at [property address]."⁹⁰

⁸² Ex. 12 at Doc. No. 00625.

⁸³ *Id.*

⁸⁴ Ex. 11.

⁸⁵ Ex. 14 at Doc. No. 001123.

⁸⁶ Ex. 14 at Doc. No. 001093.

⁸⁷ Testimony of Warren Kahnke.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Ex. 103.

54. The Kahnke Agreement included an Addendum which stated, in part, that:

2. State Adjusters representation shall be limited to all claims related to the loss involving the mail shop and storage structure at the Property.

3. State Adjusters shall use due diligence and the proper standard of care of a public adjuster to obtain the maximum recovery for Kahnke Bros., Inc. *from all of the coverage available* pursuant to the General Casualty Insurance Policy applicable to the loss at the Property.⁹¹

55. Kahnke understood the Kahnke Agreement to mean that Respondents were hired to adjust all claims associated with the loss, including property damages, content loss (equipment), and storage costs.⁹²

56. At first, Kahnke Brothers was pleased with Respondents' work.⁹³ As a result of Respondents' services, Kahnke Brothers received \$219,000 from their building damage claim, which was \$10,000 above the insurance policy limits.⁹⁴ The building damage claim was the largest portion of the Kahnke Brothers' claim.⁹⁵ However, when it came to the settlement of the content (equipment) and storage claims, Kahnke believes that Respondents abandoned the contract, failed to complete the claims process, made material misrepresentations as to the settlement amount, and acted without proper authority.⁹⁶

57. After settling the building damage claim and receiving commissions on that amount, Schuett cut off all contact with Kahnke Brothers and failed to return calls and messages.⁹⁷ However, Kahnke Brothers' equipment damage claim of \$11,000 had not yet been settled.⁹⁸ Kahnke tried to contact Schuett two times a week for a month without any response from Schuett.⁹⁹

58. Because Kahnke Brothers was represented by Respondents, the insurance company refused to communicate directly with Kahnke Brothers.¹⁰⁰ As a result, Kahnke Brothers was forced to terminate its agreement with Respondents and hire a new adjuster, Ben Johnson, to settle the equipment claim.¹⁰¹

⁹¹ *Id.* (Emphasis added).

⁹² Test. of W. Kahnke.

⁹³ Test. of W. Kahnke.

⁹⁴ *Id.*; Ex. 104.

⁹⁵ Test. of W. Kahnke.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

59. With respect to the storage costs, Kahnke testified that Respondents misrepresented the scope of the settlement and acted without authority.¹⁰² The insurance policy allowed for storage costs to be reimbursed to Kahnke Brothers during the time that the building was under repair.¹⁰³ The repair took longer than anticipated, causing the cost of storage of the building contents, to be higher than anticipated by three months.¹⁰⁴

60. In settling the building damage claim, Respondents, acting on behalf of Kahnke Brothers, accepted three months of alternative storage costs for the building contents.¹⁰⁵ Based upon representations made by Schuett, Kahnke understood that Kahnke Brothers could still make a claim for additional storage costs if the building took longer than three months to rebuild.¹⁰⁶ However, after accepting and cashing the settlement check, Kahnke realized that Kahnke Brothers was estopped from seeking additional storage costs.¹⁰⁷ Kahnke believes that Schuett misrepresented this fact to him and acted without authority in accepting only three months of storage costs as part of the claim.¹⁰⁸

61. While Kahnke Brothers was ultimately disappointed with the service provided by Respondents, it did not file a complaint against Respondents with the Department.¹⁰⁹ Instead, Kahnke Brothers was contacted by the Department as part of the Department's investigation of Respondents.¹¹⁰ Notably, Kahnke Brothers also hired Respondents to handle a hail damage claim in April 2010 and did not have any complaints arising from that contract.¹¹¹

D. Drescher Claim

62. On June 17, 2010, a tornado swept through a farm property owned by Clair and Rita Drescher (the "Dreschers").¹¹² The tornado damaged three outbuildings, destroyed five acres of trees, and caused damage so extensive that the Drescher's home was unlivable.¹¹³

63. On June 25, 2010, the Dreschers entered into a public adjuster agreement with Respondents ("Drescher Agreement") in which Respondents agreed "to advise and assist in the adjustment of the insurance claim with American Family...arising from the insured's loss pertaining to tornado...which occurred on 6/17/1020 at [property

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*; See also, Ex. 105.

¹⁰⁵ *Id.*; Ex. 37.

¹⁰⁶ Test. of W. Kahnke.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Ex. 106.

¹¹² Testimony of Clair Drescher.

¹¹³ *Id.*

address]. *House and trees only.*¹¹⁴ The “house and trees only” portion was handwritten and added into the form document.¹¹⁵

64. In February 2011, Respondents settled the Drescher’s dwelling and tree claims for \$145,174, and paid Respondents approximately 10 percent of the settlement amount, as provided in the Drescher Agreement.¹¹⁶ Dreschers were pleased with Respondents’ work and admit that they received a far larger insurance settlement as a result of Respondents’ services.¹¹⁷

65. While they were working with Respondents, the Dreschers discussed their claims for content losses and ALE.¹¹⁸ Based upon representations made by Schuett, the Dreschers understood that after the building and tree claims were settled, Respondents would pursue the content and ALE claims related to their dwelling, as part of the “house” claim.¹¹⁹

66. Throughout the spring and summer of 2011, the Dreschers repeatedly attempted to contact Schuett about the content and ALE claims; sometimes calling eight to ten times a day.¹²⁰ However, Schuett would not return their calls.¹²¹ Thus, August 19, 2011, the Dreschers formally terminated their agreement with Respondents and hired public adjuster Ben Johnson to handle the content and ALE claims.¹²² Within a month, Johnson settled the Drescher’s claims.¹²³

67. While the Drescher Agreement was expressly limited to claims involving the “house and trees,” the Dreschers understood that Respondents would be pursuing their contents and ALE claims related to the dwelling as well, based upon the representations made to them by Schuett.¹²⁴ Schuett never corrected the Drescher’s understanding of the agreement because Schuett never bothered to return the Drescher’s telephone calls or emails, and simply abandoned the Dreschers after receiving commissions from the more substantial building and tree claims.¹²⁵

68. While the Dreschers were ultimately dissatisfied with the service they received from Respondents, they did not file a complaint with the Department.¹²⁶ Instead, the Department contacted them as part of the Department’s investigation of Respondents.¹²⁷

¹¹⁴ Ex. 1 at Doc. No. 000777 (emphasis added).

¹¹⁵ *Id.*

¹¹⁶ Test. of C. Drescher.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

69. Respondents did not offer any evidence or testimony to rebut the testimony by Clair Drescher.

***Count III: Failure to Pay Agents or Satisfy Judgments
(Financial Irresponsibility and Untrustworthiness)***

A. Ben Johnson

70. In the fall of 2009, Johnson began working with Respondents as a public adjuster solicitor.¹²⁸ In exchange for his work in soliciting new clients for Respondents, Johnson would receive a commission of 30% of the fee received by Respondents.¹²⁹ However, there was no written agreement between Johnson and Respondents, and Johnson was generally paid in cash.¹³⁰

71. Johnson stopped working with Respondents after several clients that he referred to Respondents complained about Respondents' lack of communication and lack of progress on claims.¹³¹

72. On July 5, 2011, Johnson, through his business entity, Benjamin L. Johnson, Inc., obtained a conciliation court judgment against State Adjusters in the amount of \$2,364.30 for unpaid commissions owed to Johnson by State Adjusters related to the Zuelke claim.¹³² Schuett was apparently dismissed from that action.¹³³ State Adjusters has not satisfied this judgment and Schuett has told Johnson that he will not satisfy the judgment.¹³⁴

73. Respondents also failed to pay Johnson commissions owed on the Drescher claim and one other matter.¹³⁵ Respondents claim that Johnson quit before those claims were settled and thus does not owe Johnson a solicitation fee.¹³⁶

B. Cara Kvanbeck

74. On September 13, 2010, Respondents hired Cara Kvanbeck ("Kvanbeck") to create an inventory of damaged personal property as part of Respondents' work adjusting the Zuelke fire claim.¹³⁷ Schuett agreed to pay Kvanbeck \$21 per hour for her work.¹³⁸

¹²⁸ Testimony of Ben Johnson.

¹²⁹ *Id.*; Ex. 15 at Doc. No. 000371.

¹³⁰ Test. of B. Johnson.

¹³¹ *Id.*

¹³² *Id.*; See also, Ex. 15 at Doc. No. 000503.

¹³³ Ex. 15 at Doc. No. 000503.

¹³⁴ Test. of B. Johnson.

¹³⁵ *Id.*

¹³⁶ Ex. 34 at Respondents' Interrogatory Answer No. 23.

¹³⁷ Testimony of Cara Kvanbeck.

¹³⁸ *Id.*; See also, Ex. 17 at Doc. No. 000921.

75. Kvanbeck completed the work on October 7, 2010, and provided Respondents an inventory of the property.¹³⁹ On October 8, 2010, Kvanbeck provided Schuett an invoice for her services.¹⁴⁰

76. Schuett acknowledged receipt of the invoice and acknowledged responsibility for the amount in an email to Kvanbeck in which Schuett stated that he would pay her by certified funds upon his receipt of payment from Zuelke.¹⁴¹ When Schuett failed to remit payment as promised, Kvanbeck sent Schuett several other emails demanding payment – all without response by Schuett.¹⁴²

77. Kvanbeck was forced to bring a conciliation court action against Schuett in Anoka County.¹⁴³ On March 29, 2011, the Anoka County Court awarded Kvanbeck a judgment against Schuett in the amount of \$3,414.00.¹⁴⁴ Schuett has not satisfied this judgment.¹⁴⁵

78. Schuett's surety bond company has since denied Kvanbeck's claim against his bond.¹⁴⁶

79. On January 20, 2011, Kvanbeck made a complaint with the Department against Respondents.¹⁴⁷

C. Paul Norcia

80. Paul Norcia ("Norcia") is a licensed public adjuster in the State of Minnesota.¹⁴⁸ In 2009, Schuett hired Norcia as an appraiser for Schuett's personal insurance claim.¹⁴⁹ Starting in 2010, Schuett retained Norcia as an appraiser on three other insurance claims that Respondents were adjusting.¹⁵⁰ One of those claims was for Zuelke.¹⁵¹

81. While there was no written agreement between Norcia and Schuett, Norcia understood that he was to be compensated for his time by Schuett, not by the parties for whom Schuett was adjusting claims.¹⁵² Norcia's time was billed at \$125 per

¹³⁹ Test. of C. Kvanbeck; See also, Ex. 17 at Doc. No. 000920.

¹⁴⁰ Ex. 17 at Doc. No. 000921.

¹⁴¹ Ex. 17 at Doc. Nos. 000922-000929.

¹⁴² Ex. 17.

¹⁴³ Test. of C. Kvanbeck; Ex. 18.

¹⁴⁴ *Id.*

¹⁴⁵ Test. of C. Kvanbeck.

¹⁴⁶ Exs. 121 and 122.

¹⁴⁷ Ex. 16.

¹⁴⁸ Testimony of Paul Norcia.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Ex. 19 at Doc. No. 000632.

¹⁵² Test. of P. Norcia.

hour.¹⁵³ Norcia sent Schuett three invoices for his services and in the “Bill To” portion of the bill, indicated the name of the insured for whom Schuett was adjusting claims.¹⁵⁴ Schuett failed to pay these invoices.¹⁵⁵

82. Schuett did not respond to Norcia’s invoices and cut off all communication with him in the summer of 2011.¹⁵⁶ Schuett has not paid any of Norcia’s invoices.¹⁵⁷

83. On December 6, 2010, Norcia invoiced Schuett for his time related to the Zuelke claim.¹⁵⁸ The invoice was in the amount of \$1,625.00.¹⁵⁹ Respondents did not forward the invoice to Zuelke or otherwise communicate with Norcia or Zuelke regarding payment.¹⁶⁰ Norcia ultimately contacted Zuelke directly in April 2011 and received payment from Zuelke, despite the fact that the agreement for services was between Norcia and Respondents.¹⁶¹

84. No other payments have been received by Norcia for other matters he worked on for Respondents.¹⁶² While Schuett claims that he is entitled to a set-off for amounts owed to Norcia, no evidence of set-off was provided by Respondents, and Norcia denies any agreement to provide such a set-off.¹⁶³ Norcia’s testimony, being the only evidence of any agreements between Norcia and Respondents, negates an agreement for any set-off.¹⁶⁴

Count V: Failure to Maintain Required \$10,000 Bond

Count VI: Public Adjusting While Suspended

85. Schuett obtained a Public Adjuster Surety Bond No. 41177469 (“Bond”) on June 5, 2009, pursuant to Minn. Stat. § 72B.04, subd. 4 (2008).

86. The Bond was required to remain in effect during the term of the license.¹⁶⁵

87. On June 5, 2011, Schuett failed to renew the Bond and the Bond cancelled as of that date.¹⁶⁶

¹⁵³ *Id.*; See also, Ex. 19 at Doc. Nos. 000632-000634.

¹⁵⁴ *Id.*

¹⁵⁵ Test. of P. Norcia.

¹⁵⁶ *Id.*; Ex. 19 at Doc. No. 000629.

¹⁵⁷ *Id.*

¹⁵⁸ Ex. 19 at Doc. No. 000632.

¹⁵⁹ *Id.*

¹⁶⁰ Test. of P. Norcia; Test. of D. Zuelke.

¹⁶¹ *Id.*

¹⁶² Test. of P. Norcia; Ex. 19 at Doc. No. 000629.

¹⁶³ Test. of P. Norcia.

¹⁶⁴ *Id.*

¹⁶⁵ Minn. Stat. § 72B.04, subd. 4 (2008) and (2009) (applicable through June 30, 2010). Minn. Stat. § 72B.041, subd. 3 (2010) (applicable commencing July 1, 2010). 2009 Minn. Laws Ch. 63 §§ 45 and 78.

¹⁶⁶ Ex. 28 at Doc. No. 000607.

88. The law provides that in the event the required bond is terminated, the public adjuster's license shall be automatically suspended until a new bond is filed with the Commissioner.¹⁶⁷ Accordingly, Schuett's public adjuster license was automatically suspended as of June 5, 2011.¹⁶⁸

89. Even though Schuett's public adjuster license was suspended as of June 5, 2011, Schuett continued to act or hold himself out as a public adjuster.

90. On February 16, 2011, Respondents signed a public adjustment agreement with Norman Chow ("Chow") for an insurance claim pending with State Farm.¹⁶⁹

91. On October 25, 2011, Respondents sent State Farm a five-page facsimile that included an \$83,064 construction proposal, a copy of their public adjuster agreement with Chow, and an engineer's report, all related to the Chow insurance claim.¹⁷⁰

92. On November 10, 2011, Respondents sent a three-page facsimile to State Farm, which states:

Tom, here is Hugo[']s demand for appraisal. I also included a copy of my License [sic]. On July 10, 2010[,] every licensed adjuster in MN became inactive because the state re-classified all the licensed adjusters. It appears that during the State shut[-]down there was a[n] issue with the delivery of my bond. I am working on that. In the mean time[,] I will not be acting as Hugo[']s public Adjuster [sic]. Actually now that State Farm has an engineer[']s report that defines the repair and Hugo has a bid for the repairs from a contractor into State Farm[,] there is no need for me to act in any other manner than [an] expert.¹⁷¹

93. Schuett falsely blamed the Minnesota state government shutdown of 2011 for the suspension of Schuett's Bond; demanded an appraisal on behalf of Chow; and deceptively enclosed a copy of Schuett's public adjuster license that included a January 31, 2012 expiration date.¹⁷² Under the circumstances, these representations were false and deceptive.

94. Respondents' actions pursuing Chow's insurance claim after June 5, 2011, required a valid public adjuster license.¹⁷³

¹⁶⁷ Minn. Stat. § 72B.041, subd. 3 (2010).

¹⁶⁸ *Id.*

¹⁶⁹ Ex. 30 at Doc. No. 000657.

¹⁷⁰ Ex. 30 at Doc. Nos. 000655 – 000659; Test. of C. Jenkins.

¹⁷¹ Ex. 30 at Doc. No. 000650.

¹⁷² Ex. 30 at Doc. Nos. 000650 – 000652; Test. of C. Jenkins.

¹⁷³ Test. of C. Jenkins.

95. While Schuett claimed not to be acting as a public adjuster at the time of the November 2011 fax, he was, in fact, improperly and deceptively holding himself out as a licensed public adjuster and essentially acting as a public adjuster.¹⁷⁴

Count VII: Unlicensed Public Adjusting Activities of State Adjusters

96. State Adjusters is not, and has never been, a licensed public adjuster in the State of Minnesota.

97. Commencing July 1, 2010, all persons, as well as all business entities providing insurance adjusting services, unless specifically exempt by statute, must be licensed by the Commissioner.¹⁷⁵

98. Prior to July 1, 2010, a public adjuster license was not required of business entities, and was only required of the “natural person” providing the public adjusting services (i.e., Schuett).¹⁷⁶

99. While Schuett is a licensed public adjuster, a separate license was required of State Adjusters, as long as State Adjusters was acting or holding itself out as a public adjuster after July 1, 2010.

100. State Adjusters, acting through Schuett, entered into public adjuster agreements with clients on August 28, 2010, October 7, 2010, February 8, 2011, and February 16, 2011.¹⁷⁷

101. State Adjusters was, therefore, acting and/or holding itself out as a public adjuster without having a public adjuster license after July 1, 2010.

Count VIII: Failure to Report Iowa Administrative Action

102. On February 26, 2010, Respondents signed a contract with an Iowa consumer to provide public adjuster services.¹⁷⁸ Schuett presented a business card to the individual that stated, “State Adjusters, LLC, Licensed Public Adjusters.”¹⁷⁹ Neither Schuett nor State Adjusters was licensed to perform public adjuster services in the State of Iowa.¹⁸⁰

103. As a result, on January 5, 2011, the Iowa Insurance Commissioner issued a Summary Cease and Desist Order against Respondents for unlicensed practice, and

¹⁷⁴ Ex. 30 at Doc. No. 000650.

¹⁷⁵ Minn. Stat. § 72B.02, subd. 2, 6, and 15 (2010); Minn. Stat. § 72B.03, subd. 1 (2010). See also, 2009 Minn. Laws Ch. 63 §§ 32-43 and 78.

¹⁷⁶ Minn. Stat. § 72B.02, subd. 2, 4, and 6 (2008); Minn. Stat. § 72B.03, subd. 1 (2008). See also, 2009 Minn. Laws Ch. 63 §§ 32-43 and 78.

¹⁷⁷ Ex. 1.

¹⁷⁸ Ex. 24.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

misleading or false information or false advertising.¹⁸¹ Respondents failed to respond to the Cease and Desist Order.¹⁸²

104. On June 7, 2011, the Iowa Department of Inspections and Appeals Division of Administrative Hearings issued a Default Order against Respondents that ordered Schuett to cease and desist from acting as a public adjuster in the State of Iowa.¹⁸³

105. Schuett failed to notify the Commissioner of the Iowa administrative action against him, and failed to provide a copy of the Cease and Desist Order or Default Order to the Commissioner.¹⁸⁴

***Count IX: Dissemination of Untrue, Deceptive or Misleading Statements
(False Advertising)***

106. As of February 16, 2010, State Adjusters' website including the following public statements and representations:¹⁸⁵

- *"State Adjusters is a company of 'State Adjusters.'"*¹⁸⁶

a. Schuett is the only public adjuster officially affiliated with State Adjusters.¹⁸⁷ Neither Norcia nor Johnson worked for State Adjusters in their capacities as licensed public adjusters.¹⁸⁸

- *"State Adjusters is licensed to negotiate with insurance companies -- contractors are not."*¹⁸⁹

b. State Adjusters has never been licensed in Minnesota to act as a public adjuster.¹⁹⁰ However, at the time that this representation was published, only a "natural person" was subject to licensing by the State of Minnesota as a public adjuster.¹⁹¹ At the time that this representation was published, Schuett, a natural person, was a licensed public adjuster.¹⁹²

¹⁸¹ *Id.*

¹⁸² Ex. 25.

¹⁸³ *Id.*

¹⁸⁴ Test. of C. Jenkins.

¹⁸⁵ Ex. 22.

¹⁸⁶ Ex. 22 at Doc. No. 000003.

¹⁸⁷ Test. of C. Jenkins; see *also* Ex. 34 at Answer to Interrogatory No. 4 ("First of all I do not have any agents.").

¹⁸⁸ Test. of P. Norcia; Test. of B. Johnson.

¹⁸⁹ Ex. 22 at Doc. No. 000005.

¹⁹⁰ Test of C. Jenkins.

¹⁹¹ Minn. Stat. § 72B.03, subd. 1 (2008) and Minn. Stat. § 72B.02, subd. 2, 4, and 6 (2008). A change to the definition of "person" under Minn. Stat. § 72B.02, subd. 2 did not go into effect until July 1, 2010. See 2009 Minn. Laws Ch. 63 §§ 32-35 and 78.

¹⁹² Ex. 30 at Doc. No. 000652

- “State Adjusters offers you over 25 years of practical adjusting experience.”¹⁹³

c. State Adjusters did not become registered with the Minnesota Secretary of State until June 2009, and Schuett did not become licensed as a public adjuster in Minnesota until June 9, 2009.¹⁹⁴ There was no other evidence presented at the hearing to establish the years of adjusting experience for State Adjusters or for Schuett.

- “Our large network of public adjusters has experience in every area of insurance claim adjusting . . . We offer the most experience, the best results, and on time delivery of estimates and adjusters.”¹⁹⁵

d. Schuett, the only known public adjuster affiliated with State Adjusters, did not become licensed as a public adjuster until June 9, 2009.¹⁹⁶ There was no evidence presented that any other licensed public adjusters were affiliated with or worked for State Adjusters in their capacity as public adjusters. Johnson worked for State Adjusters as a public adjuster solicitor.¹⁹⁷ Norcia worked for State Adjusters as an independent appraiser.¹⁹⁸

- “Our company is a company of experienced, licensed, and bonded public adjusters who help business owners and homeowners settle claims by assessing and documenting every detail of a property loss.” (Emphasis in original.)¹⁹⁹

e. Schuett, the only known public adjuster affiliated with State Adjusters, did not become licensed as a public adjuster until June 9, 2009.²⁰⁰ There was no evidence presented that any other licensed public adjusters were affiliated with or worked for State Adjusters in their capacity as public adjusters. Johnson worked for State Adjusters as a public adjuster solicitor.²⁰¹ Norcia worked for State Adjusters as an independent appraiser.²⁰²

- “The supervising public adjuster has personally estimated in excess of \$75,000,000.00 of construction projects.”²⁰³

f. There was no evidence in the record as to any amount of work that has been estimated by Schuett or State Adjusters.

¹⁹³ Ex. 22 at Doc. No. 000016.

¹⁹⁴ Test of C. Jenkins; Ex. 30 at Doc. No. 000652.

¹⁹⁵ Ex. 22 at Doc. No. 000004-000005.

¹⁹⁶ Test. of C. Jenkins; Ex. 30 at Doc. No. 000652.

¹⁹⁷ Test. of B. Johnson.

¹⁹⁸ Test. of P. Norcia.

¹⁹⁹ Ex. 22 at Doc. No. 000005.

²⁰⁰ Test. of C. Jenkins; Ex. 30 at Doc. No. 000652.

²⁰¹ Test. of B. Johnson.

²⁰² Test. of P. Norcia.

²⁰³ Ex. 22 at Doc. No. 000016.

- Respondents listed four “recent claims” as examples of their licensed public adjusting work: (1) Blaine, MN fire -- Settled 11/26/09; (2) Minneapolis, MN Frozen Pipe – Contractor Bid 04/22/09 -- Settled July 25, 2009; (3) Blaine, MN – Personal Contents 2/06/09; and (4) Minneapolis, MN – Personal Property 6/19/09.²⁰⁴

g. Two of these claims (#1 and #3) occurred before State Adjusters was in existence and before Schuett was licensed.²⁰⁵ These same two claims (#1 and #3) relate to Schuett’s personal insurance claims that were handled for him by MBL Adjustment Services, Inc.²⁰⁶

107. By July 27, 2011, Respondents had substantially revised their website to correct these misrepresentations, although the website continued to hold State Adjusters out as a licensed public adjuster.²⁰⁷ Nonetheless, Respondents substantially corrected the issues addressed by the Department in 2010.

***Count X: Untrustworthy, Financially Irresponsible, Incompetent,
or Unqualified to Act as a Licensed Public Adjuster***

108. In addition to the above, between August 1, 2006, and April 29, 2009, 27 separate judgments ranging from \$714.47 to \$102,729.16, and totaling more than \$786,000, were entered against Schuett and/or his former residential building contractor company, Schuett General Contractors, Inc., in various district courts in Minnesota.²⁰⁸ Respondents provided no evidence to rebut these judgments. All of these judgments were obtained prior to Schuett’s obtaining a public adjuster license and none of them were related to Schuett’s work as a public adjuster.²⁰⁹

109. Two additional judgments obtained against Schuett or State Adjusters are set forth above, and were obtained by Kvanbeck and Johnson, both of which involved Schuett and/or State Adjusters practice as insurance adjusters.²¹⁰

110. Schuett has failed to satisfy these multiple judgments against him.²¹¹

Fifth Amendment Privilege

111. On August 3, 2012, the Department called Schuett to testify as a witness at the hearing.²¹²

²⁰⁴ Ex. 22 at Doc. No. 000019.

²⁰⁵ Test. of C. Jenkins; Ex. 30 at Doc. No. 000652.

²⁰⁶ Test. of C. Jenkins.

²⁰⁷ Ex. 23.

²⁰⁸ Ex. 26. See also Ex. 33 at Respondents’ Responses to Requests for Admissions No. 33.

²⁰⁹ *Id.*

²¹⁰ Ex. 18 and Ex. 15 at Doc. No. 000233.

²¹¹ *Id.*

²¹² Testimony of Donald Schuett.

112. Schuett invoked his Fifth Amendment constitutional right against self-incrimination, and refused to answer any questions or provide testimony on his own behalf or on behalf of State Adjusters.²¹³

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of the Department of Commerce (“Commissioner”) and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. § 45.027, subds. 6, 7 and 11 (2010), Minn. Stat. § 72B.08 (2010), and Minn. Stat. § 14.50 (2010).

2. The Commissioner has timely served upon Respondents a Notice of Hearing pursuant to Minn. Stat. § 45.027, subd. 7(b) (2010) and Minn. Stat. § 72B.08 (2010).

3. Respondents received due, proper, and timely notice of the charges against them, and of the time and place of hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

4. The Commissioner has complied with all substantive and procedural requirements of rule and law.

Definition of Public Adjuster

5. Unless specifically exempt from licensure under Minn. Stat. § 72B.03, subd. 1(b), a person shall not act or hold out as a public adjuster unless the person is licensed as a public adjuster in accordance with Minn. Stat. Ch. 72B.²¹⁴

6. A “public adjuster” is defined as a person who, for compensation or any other thing of value on behalf of an insured:

(1) acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(2) advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public as a public adjuster of first-

²¹³ *Id.*

²¹⁴ Minn. Stat. § 72B.03, subd. 1(a) and (b) (2010). No exceptions from licensure set forth in Minn. Stat. § 72B.03(b) apply to Schuett or State Adjusters.

party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(3) directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.²¹⁵

7. A “person,” for purposes of Minn. Stat. ch. 72B, means “an individual or business entity.”²¹⁶ A “business entity” means “a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.”²¹⁷

8. The definition of “person,” which includes business entities, as applied to public adjusters, went into effect on July 1, 2010.²¹⁸ Prior to July 1, 2010, only natural persons were required to be licensed as public adjusters.²¹⁹

Regulation of Public Adjusters

9. The Commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the Commissioner, or censure that person if the Commissioner finds:

(1) the order is in the public interest; and

(2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the Commissioner; or

(3) the person has provided false, misleading, or incomplete information to the Commissioner or has refused to allow a reasonable inspection of records or premises; or

(4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner.²²⁰

²¹⁵ Minn. Stat. § 72B.02, subd. 6 (2010).

²¹⁶ Minn. Stat. § 72B.02, subd. 2 (2010).

²¹⁷ Minn. Stat. § 72B.02, subd. 15 (2010).

²¹⁸ 2009 Minn. Laws ch. 63, §§ 32-48 and 78.

²¹⁹ Minn. Stat. § 72B.02, subd. 2, 4, and 6 (2008).

²²⁰ Minn. Stat. § 45.027, subd. 7(a) (2010).

10. In addition, the Commissioner may impose a civil penalty not to exceed \$10,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the Commissioner.²²¹

11. Improperly withholding, misappropriating, or converting any money belonging to a policyholder, beneficiary, or other person when received in the course of the insurance business constitutes an unfair method of competition and an unfair and deceptive act or practice subject to the suspension or revocation of a public adjuster license, censure, and the imposition of civil penalties not to exceed \$10,000 per violation.²²²

12. Engaging in fraudulent, coercive, or dishonest practices in connection with the insurance business constitutes an unfair method of competition and an unfair and deceptive act or practice subject to the suspension or revocation of a public adjuster license, censure, and the imposition of civil penalties not to exceed \$10,000 per violation.²²³

13. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies constitutes an unfair, deceptive, or fraudulent act subject to the suspension or revocation of a public adjuster license, censure, and the imposition of civil penalties not to exceed \$10,000 per violation.²²⁴

14. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice subject to the suspension or revocation of a public adjuster license, censure, and the imposition of civil penalties not to exceed \$10,000 per violation.²²⁵

15. A public adjuster is subject to Minn. Stat. §§ 72A.17 to 72A.32.²²⁶

16. Commencing July 1, 2010, the Commissioner may suspend or revoke an insurance adjuster's license and impose a civil penalty according to Minn. Stat. § 45.027, subd. 6, for any of the following causes:

²²¹ Minn. Stat. § 45.027, subd. 6 (2010).

²²² Minn. Stat. § 72A.20, subd. 18(a) (2010); Minn. Stat. § 45.027, subds. 6 and 7 (2010).

²²³ Minn. Stat. § 72A.20, subd. 18(b) (2010); Minn. Stat. § 45.027, subds. 6 and 7 (2010).

²²⁴ Minn. Stat. § 72A.20, subd. 12(2) (2010); Minn. Stat. § 45.027, subds. 6 and 7 (2010).

²²⁵ Minn. Stat. § 72A.20, subd. 2 (2010); Minn. Stat. § 45.027, subds. 6 and 7 (2010).

²²⁶ Minn. Stat. § 72B.03, subd. 2(g) (2010).

...

(3) violating any insurance laws, rules, subpoena, or order of the Commissioner or of another state's insurance commissioner or any provision of sections 72B.01 to 72B.14;

(4) improperly withholding, misappropriating, or converting any money or properties received in the course of doing insurance business;

(5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, with intent to deceive, or engaging in, or attempting to engage in, any fraudulent transaction with respect to a claim or license that the licensee is adjusting and, in the case of a public adjuster solicitor, misrepresenting the services offered or the fees or commission to be charged;

...

(7) the licensee has demonstrated incompetency or untrustworthiness to act as an adjuster or public adjuster solicitor;

...

(10) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;²²⁷

17. No initial or renewal public adjuster's license shall be issued to any applicant unless there is on file with the Commissioner a good and sufficient surety bond, issued by an insurer authorized to do business in Minnesota, in the amount of \$10,000.²²⁸

18. The \$10,000 bond required under Minn. Stat. § 72B.041, subd. 3, shall remain in effect during the term of the license, or until the surety is released from liability by the Commissioner, or until canceled by the surety.²²⁹ In the event that the required bond is terminated, the public adjuster's license shall automatically be suspended until a new bond is filed with the Commissioner.²³⁰

19. A public adjuster must report to the Commissioner any administrative action taken against the adjuster in another jurisdiction or by another governmental agency in Minnesota within 30 days of the final disposition of the matter.²³¹ The report

²²⁷ Minn. Stat. § 72B.08, subd. 1 (2010).

²²⁸ Minn. Stat. § 72B.041, subd. 3 (2010); See also, Minn. Stat. § 72B.04, subd. 4 (2008).

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Minn. Stat. § 72B.107(a) (2010).

must include a copy of the order or consent order and any other relevant legal documents.²³²

Burden of Proof

20. The Department has the burden of establishing, by a preponderance of the evidence, the basis for the suspension, revocation, or other licensing action or penalty sought by the Department in this case.²³³

21. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence.²³⁴

22. A preponderance of the evidence means that it must be established by a greater weight of the evidence; it must be of a greater or more convincing effect; and it is more likely true than not true.²³⁵

Count I

Withholding, Misappropriation, or Conversion of Insurance Proceeds

Minn. Stat. § 45.027, subd. 7(a)(4) (2008);

Minn. Stat. § 72A.20, subd. 18(a) and (b) (2008); and

Minn. Stat. § 72B.08, subd. 1(c), (d), (e) and (g) (2008)

23. The Department has established by a preponderance of the evidence that Respondents improperly withheld, misappropriated, or converted money belonging to Paloranta and Chase which was received in the course of Respondents' insurance adjuster business; and that Respondents engaged in fraudulent, coercive, or dishonest practices in connection with their insurance adjustment business, and that such acts constitute an unfair method of competition and unfair and deceptive acts or practices, in violation of Minn. Stat. § 72A.20, subd. 18(a) and (b) (2008).

24. The Department has established by a preponderance of the evidence that by withholding, misappropriating, or converting money belonging to Paloranta and Chase which was received in the course of Respondents' insurance adjuster business, Respondents engaged in an act or practice which demonstrates that Respondents are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as insurance adjusters, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2008).

25. The Department has established by a preponderance of the evidence that Respondents willfully violated insurance laws; misappropriated, converted, or illegally withheld money required to be held in a fiduciary capacity; engaged in a fraudulent

²³² *Id.*

²³³ Minn. R. 1400.7300, subp. 5 (2012).

²³⁴ *Id.*

²³⁵ 4 Minnesota Practice, CIV JIG 14.15 (2006); See also, *State v. Walberg*, 296 N.W.2d 408, 418 (Minn. 1980).

transaction with respect to a claim or loss Respondents were adjusting; and demonstrated incompetency or untrustworthiness to act as insurance adjusters, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(c), (d), (e) and (g) (2008).

Count II

Abandonment of Claims and Failure to Communicate

(Zuelke, Olivier, Kahnke, and Drescher Claims)

Minn. Stat. § 45.027, subd. 7(a)(4) (2010);

Minn. Stat. § 72A.20, subd. 12(2); and

Minn. Stat. § 72B.08, subd. 1(3),(7) and (10) (2010)

26. The Department has established by a preponderance of the evidence that Respondents breached their obligations to perform insurance adjustment services on behalf of multiple clients, and abandoned insurance claims before they were finalized but after Respondents had received their commissions. As a result, Respondents engaged in acts or practices which demonstrate that Respondents are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as insurance adjusters, subjecting Respondents to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

27. The Department has established by a preponderance of the evidence that by failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies, Respondents caused or permitted, with such frequency to indicate a general business practice, unfair, deceptive or fraudulent acts concerning claims or complaints by insureds, in violation of Minn. Stat. § 72A.20, subd. 12(2) (2010).

28. The Department has established by a preponderance of the evidence that Respondents violated insurance laws (specifically, Minn. Stat. § 72A.20, subd. 12(2)), and demonstrated incompetency or untrustworthiness to act as an adjuster, subjecting them to sanction pursuant to Minn. Stat. § 72B.08, subd. 1 (3), (7), and (10) (2010).

Count III

Failure to Pay Agents or Satisfy Judgments

Minn. Stat. § 45.027, subd. 7(a)(4) (2010) and

Minn. Stat. § 72B.08, subd. 1(7) and (10) (2010)

29. The Department has established by a preponderance of the evidence that Respondents failed to pay persons they hired to assist in adjusting and appraising insurance claims, and failed to satisfy judgments obtained against them for professional services rendered on insurance claims. As a result, Respondents engaged in acts or practices which demonstrate that Respondents are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as insurance adjusters, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

30. The Department has established by a preponderance of the evidence that by failing to pay persons they hired to assist in adjusting and appraising insurance claims, and by failing to satisfy judgments obtained against them for professional services rendered on insurance claims, Respondents demonstrated incompetency or untrustworthiness, or financial irresponsibility, in the conduct of their insurance business, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(7) and (10) (2010).

Count IV
False Statements and Representations to Clients
Minn. Stat. § 45.027, subd. 7(a)(4) (2010) and
Minn. Stat. § 72.08, subd. 1(7) and (10)

31. The Department has established by a preponderance of the evidence that Respondents made false representations to a client regarding the availability of additional insurance coverage. As a result, Respondents engaged in an act or practice which demonstrates that Respondents are untrustworthy or otherwise unqualified to act as insurance adjusters, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

32. The Department has established by a preponderance of the evidence that by making a false representation to a client regarding the availability of additional insurance coverage, Respondents demonstrated untrustworthiness in the conduct of their insurance business, thereby subjecting Respondents to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(7) and (10) (2010).

Count V
Cancellation of Bond
Minn. Stat. § 45.027, subd. 7(a)(4) (2010);
Minn. Stat. § 72B.041, subd. 3 (2010); and
Minn. Stat. § 72B.08, subd. 1(3) and (10) (2010)

33. The Department has established by a preponderance of the evidence that Schuett canceled, failed to renew, or let lapse the \$10,000 bond required for public adjusters under Minn. Stat. § 72B.041, subd. 3, at a time when Schuett was acting or holding himself out as a public adjuster in the State of Minnesota, in violation of Minn. Stat. § 72B.041, subd. 3 (2010).

34. As a result, the Department established by a preponderance of the evidence that Schuett engaged in acts or practices which demonstrate that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as an insurance adjuster, thereby subjecting Schuett to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

35. The Department has established by a preponderance of the evidence that by canceling, failing to renew, or letting lapse the \$10,000 bond required for public adjusters under Minn. Stat. § 72B.041, subd. 3, at a time when Schuett was acting or holding himself out as a licensed insurance adjuster in the State of Minnesota, Schuett demonstrated incompetency or untrustworthiness, or financial irresponsibility, in the conduct of his insurance business, thereby subjecting Schuett to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(7) and (10) (2010).

Count VI

Acting as an Insurance Adjuster While License Was Suspended

Minn. Stat. § 45.027, subd. 7(a)(2) (2010);

Minn. Stat. § 72B.041, subd. 3 (2010); and

Minn. Stat. § 72B.08, subd. 1(3) (2010)

36. The Department has established by a preponderance of the evidence that Schuett acted or held himself out as a public adjuster at a time when his public adjuster license was administratively suspended for cancelation of his \$10,000 bond, in violation of Minn. Stat. § 72B.041, subd. 3 (2010).

37. As a result, the Department has established by a preponderance of the evidence that Schuett violated a law, rule or order related to the duties and responsibilities entrusted to the Commissioner, thereby subjecting Schuett to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(2) (2010).

38. The Department has established by a preponderance of the evidence that by canceling, failing to renew, or letting lapse the \$10,000 bond required for public adjusters under Minn. Stat. § 72B.041, subd. 3, at a time when Schuett was acting or holding himself out as an insurance adjuster in the State of Minnesota, Schuett demonstrated incompetency or untrustworthiness, or financial irresponsibility, in the conduct of his insurance business, subjecting Schuett to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(7) and (10) (2010).

Count VII

Public Adjusting Without A License

Minn. Stat. §45.027, subd. 7(a)(2) (2010);

Minn. Stat. § 72B.02, subd. 6 (2010);

Minn. Stat. § 72B.03, subd. 1 (2010); and

Minn. Stat. § 72B.08, subd. 1(3) (2010)

39. The Department has established by a preponderance of the evidence that State Adjusters, LLC is not, and has never been, licensed by the State of Minnesota as a public adjuster.²³⁶

40. The Department has established by a preponderance of the evidence that after July 1, 2010, State Adjusters engaged in acts or practices of a public adjuster, as

²³⁶ Test. of C. Jenkins.

defined by Minn. Stat. § 72B.02, subd. 6 (2010); and held itself out as a public adjuster, solicited business as a public adjuster, or represented itself to the public as a public adjuster, without having a public adjuster license, as required by Minn. Stat. § 72B.03, subd. 1 (2010).

41. As a result, the Department established by a preponderance of the evidence that State Adjusters violated a law, rule or order related to the duties and responsibilities entrusted to the Commissioner and insurance laws (including Minn. Stat. § 72B.03, subd. 1, thereby subjecting State Adjusters to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(2) (2010) and Minn. Stat. § 72B.08, subd. 1(3) (2010).

Count VIII
Violation of Iowa Insurance Laws and Failure to Report
Minn. Stat. § 72B.08, subd. 1(3) (2010); and
Minn. Stat. § 72B.107 (2010)

42. The Department has established by a preponderance of the evidence that Respondents violated the insurance laws of the State of Iowa. As a result, the Department has established by a preponderance of the evidence that Respondents are subject to sanction pursuant to Minn. Stat. § 72B.08, subd. 1(3) (2010).

43. The Department has established by a preponderance of the evidence that Schuett failed to report to the Commissioner within 30 days of the final disposition, an administrative action taken by the State of Iowa against Respondents resulting from their acts as insurance adjusters, in violation of Minn. Stat. § 72B.107(a) (2010).

Count IX
False Advertising
Minn. Stat. § 45.027, subd. 7(a)(2) (2010);
Minn. Stat. § 72A.20, subd. 2 (2010); and
Minn. Stat. § 72B.08, subd. 1(3) (2008)

44. The Department has established by a preponderance of the evidence that on or about February 16, 2010, Respondents made, published, disseminated, circulated, or placed before the public, or caused, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement, containing an assertion, representation, or statement with respect to their insurance adjuster business, which was untrue, deceptive, or misleading. Such act constitutes an unfair method of competition and an unfair and deceptive act or practice in violation of Minn. Stat. § 72A.20, subd. 2 (2010).

45. The violation of Minn. Stat. § 72A.20, subd. 2 was not a willful violation so as to be a violation of Minn. Stat. § 72B.08, subd 1(c) (2008).²³⁷

²³⁷ Because the subject advertisement was dated February 16, 2010, Minn. Stat. § 72B.08, subd. 1(c) (2008) applies, not Minn. Stat. § 72B.08, subd. 1(3) (2010), which went into effect on July 1, 2010. See, 2009 Minn. Laws §§ 32-48 and 78.

46. The Department has established by a preponderance of the evidence that by violating Minn. Stat. § 72A.20, subd. 2 (2010), Respondents violated a law, rule, or order related to the duties and responsibilities entrusted to the Commissioner, as provided in Minn. Stat. § 45.027, subd. 7(a)(2). Accordingly, Respondents are subject to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a) (2010).

Count X
Unsatisfied Judgments
Minn. Stat. § 45.027, subd. 7(a)(4) (2010)

47. The Department has established by a preponderance of the evidence that Schuett has over \$786,000 in separate judgments entered against him and/or his corporate entities, and that these judgments have not been satisfied. As a result, Schuett has engaged in acts or practices, whether or not directly involving his insurance adjusting business, which demonstrate that Schuett is not financially responsible to act under the public adjuster license granted to him by the Commissioner. Accordingly, Schuett is subject to sanction pursuant to Minn. Stat. § 45.027, subd. 7(a)(4) (2010).

48. As a result of the above-described violations, an Order imposing disciplinary action against Respondents is in the public interest.

Based upon the foregoing Findings of Fact and Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner impose an appropriate sanction against Donald Herman Schuett, Jr. and State Adjusters, LLC, pursuant to Minn. Stat. § 45.027, subds. 6 and 7.

Dated: September 28, 2012

s/Ann O'Reilly

ANN O'REILLY
Administrative Law Judge

Reported: Digitally Recorded; Transcript not prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner of the Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul MN 55101, (651) 296-2715 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Under the contested case hearing rules of the Administrative Procedure Act (“APA”), a party proposing that action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden of proof or standard.²³⁸ Because there is no other burden of proof or standard prescribed by statute or case law for this type of action, the APA standard set forth in Minn. R. 1400.7300, subp. 5 prevails. There is no legal basis to apply a different standard of proof.

As the agency imposing administrative action, the Department has the burden of establishing, by a preponderance of the evidence, the basis for the disciplinary action or sanction sought by the Department in this case.²³⁹ In turn, Respondents have the burden of proving the existence of all affirmative defenses by the same preponderance of the evidence standard.²⁴⁰

²³⁸ Minn. R. 1400.7300, subp. 5 (2012).

²³⁹ *Id.*

²⁴⁰ *Id.*

A preponderance of the evidence means that the fact or matter asserted must be established by a greater weight of the evidence.²⁴¹ “It must be of a greater or more convincing effect and ... lead you to believe that it is more likely that the claim ... is true than ... not true.”²⁴² The preponderance of the evidence standard is less than the clear and convincing standard, and less than the proof beyond a reasonable doubt standard used in criminal trials.²⁴³

The Department does not need to prove beyond a reasonable doubt or with clear and convincing evidence that Respondents committed the violations asserted in the Statement of Charges. This is not a criminal action where a prosecuting authority would have to prove the elements of a crime beyond a reasonable doubt; in which case the Department may or may not have met the high burden for some of the charges.

Rather, in the civil matter at hand, the Department need only show by a preponderance of the evidence that Respondents violated the insurance regulations cited in order for the Commissioner to have authority to impose sanctions and/or take licensing action. Applying a preponderance of the evidence standard, the Department must show that it is more likely than not that Respondents violated the regulations at issue in this case.

In all professional licensing actions, the Administrative Law Judge recognizes and appreciates the serious effect and consequences of the proceedings on the licensee, as well as the importance of the proceedings in the protection of the public. In upholding the preponderance of the evidence standard set forth in Minn. R. 1400.7300, subp. 5, the Minnesota Supreme Court noted:

[T]hese proceedings[,] brought on behalf of the state, attacking a person's professional and personal reputation and character[,] and seeking to impose disciplinary sanctions, are no ordinary proceedings. We trust that in all professional disciplinary matters, the finder of fact, bearing in mind the gravity of the decision to be made, will be persuaded only by evidence with heft. The reputation of a profession, and the reputation of a professional[,] as well as the public's trust[,] are at stake.²⁴⁴

Thus, while the applicable standard of proof in this action is a preponderance of the evidence, as opposed to other higher standards, the Administrative Law Judge reviews the evidence with scrutiny and holds the Department strictly to its burden, finding only in favor of the Department where the “heft” of the evidence is in favor of the State.

²⁴¹ 4 Minnesota Practice, CIV JIG 14.15 (2006).

²⁴² *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

²⁴³ *State v. Shamp*, 422 N.W.2d 520, 525 (Minn. Ct. App. 1988), citing *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978), review denied (Minn. June 10, 1988).

²⁴⁴ *In re the Matter of the Disciplinary Action Against the Dentist License of Joseph H. Wang*, 441 N.W.2d 488, 492 (Minn. 1989).

Here, Schuett invoked his Fifth Amendment right against self-incrimination and refused to testify. Respondents did not present any witnesses or testimony. All evidence offered by Respondents was in the form of impeachment and documents offered in cross examination of the Department's witnesses. Consequently, only the admissible documentary and testimonial evidence received at the hearing form the basis for review in this matter.

Count I: Withholding, Misappropriation, or Conversion of Insurance Proceeds

The evidence is undisputed that Respondents provided insurance adjusting services to Paloranta with respect to ice and snow damage to his home for which Respondents were to receive a 10 percent (10%) contingency fee based on the insurance proceeds recovered.²⁴⁵ It is further undisputed that on March 30, 2010, State Farm sent Paloranta a check in the amount of \$41,896.86 in settlement of the insurance claim.²⁴⁶ Pursuant to the agreement, State Adjusters was only entitled to a fee of \$4,189.69, representing 10 percent of the insurance proceeds.²⁴⁷

The check was made payable to three parties: Paloranta, Chase, and State Adjusters.²⁴⁸ It is undisputed that Chase did not endorse the check, did not authorize the cashing of the check, and did not receive any proceeds from the check.²⁴⁹ Schuett admits to depositing the check into State Adjusters' TCF Bank account.²⁵⁰ The evidence is uncontroverted that Schuett is the sole principal of State Adjusters, and was, thus, the only party with access to those funds.²⁵¹

Johnson testified that he received only \$20,000 from the proceeds of the check, paid in four cashier's checks in the amount of \$5,000 each.²⁵² There was no evidence presented to refute Johnson's testimony, and no evidence offered to refute the fact that the remainder of the proceeds (\$21,896.86) was retained by State Adjusters.

Respondents' earned commission was only to be \$4,189.69.²⁵³ Accordingly, any portion of the insurance proceeds retained by Respondents in excess of \$4,189.69 was improperly withheld, misappropriated, or converted by Respondents.

Given the totality of the circumstances surrounding the insurance claim (specifically, the fact that the home was in foreclosure from the time of the initiation of the claim), it is entirely possible that Paloranta and Johnson conspired on their own or with Respondents to deprive Chase of its interest in the proceeds.²⁵⁴ However, the

²⁴⁵ Ex. 1 at Doc. No. 000761; Test. of J. Paloranta.

²⁴⁶ Ex. 3.

²⁴⁷ Ex. 1 at Doc. No. 000761.

²⁴⁸ Ex. 3.

²⁴⁹ Test. of M. Guyton; Ex. 9.

²⁵⁰ Ex. 34 at Schuett's Answer to Interrogatory No. 2.

²⁵¹ Test. of C. Jenkins.

²⁵² Test. of J. Paloranta.

²⁵³ Ex. 1 at Doc. No. 000761.

²⁵⁴ The ALJ finds the testimony of Johnson and Paloranta less than entirely credible.

deprivation of Chase's interest in the insurance proceeds is not necessarily controlling with respect to the issue of misappropriation of the insurance funds. Rather, the fact that the entire proceeds were deposited into State Adjusters' bank account by Schuett, and that Paloranta only received, at best, \$20,000 of those proceeds, is sufficient to show that it is more likely than not that Respondents improperly withheld, misappropriate, or converted the funds. Accordingly, the Department has established, by a preponderance of the evidence, that Respondents withheld, misappropriated, or converted the insurance proceeds, and, thus, the Department has met its burden of proof with respect to Count I.

Count II: Abandonment of Claims and Failure to Communicate

Through the credible testimony of three of Respondents' former clients (Zuelke, Kahnke, and Drescher), the Department established a pattern of conduct by Respondents whereby Respondents would adjust the largest portion of a client's insurance claim, accept a commission on those proceeds, and then abandon the client prior to finalizing the insurance claims. In each of these cases, it was the finalization of the claims process and the follow-up work that was the most time-consuming and arduous, and for which an insurance adjuster's services would be most helpful.

Respondents, through cross-examination, attempted to show that each of these parties simply misunderstood or misconstrued the scope of the public adjuster agreements they executed with Respondents. However, Respondents ceased communications with the clients once Respondents' were paid their substantial commissions. Respondents simply cut off all communication, refused to respond to numerous telephone calls and emails, and altogether abandoned the clients without explanation. In all cases, this left the clients in a considerable predicament; in some cases leaving them unable to communicate directly with the insurance companies to complete the claims, delaying the processing of the remaining claims, and requiring the clients to hire other adjusters to complete the work.

In the case of the Oliviers, Respondents simply abandoned them altogether and failed to promptly pursue their claims with the insurance company. While it is clear that there was a breakdown in the communication between the Oliviers and Respondents, it was Respondents' duty, as the insurance adjusters, to at least acknowledge Olivier's communications and respond promptly, both to the Oliviers and their insurance company.

This is not a case where one disgruntled client articulates a complaint. Rather, these are four separate clients who tell of strikingly similar experiences with Respondents. The testimony of Zuelke, Kahnke, Drescher, and Olivier demonstrate a pattern and practice of: (1) abandoning clients after Respondents received the largest portion of their commissions but before the claims were finalized; (2) willfully ignoring repeated client communications and desperate pleas for assistance; and (3) failing to respond diligent and promptly with clients and/or their insurance companies.

While Zuelke, Kahnke and Drescher all admit that Respondents' work resulted in very favorable initial settlements, the services that they ultimately received from Respondents were unprofessional, dishonest, and demonstrated untrustworthiness to act as an insurance adjuster and in the conduct of their insurance business. The fact that Respondents are skilled at receiving high settlements for their clients does not diminish or excuse Respondents' responsibility to act professionally, truthfully, and lawfully in their practice.

Count III: Failure to Pay Agents or Satisfy Judgments

Johnson, Kvanbeck, and Norcia all testified to verbal agreements with Schuett for the provision of insurance-related services for which they were not compensated.²⁵⁵ In each case, the parties provided services to Respondents or Respondents' clients, and in each case, Respondents failed to compensate the parties, despite the fact that Respondents were enriched by the services provided.

The most credible testimony was provided by Kvanbeck, who, in good faith, provided hours of service to Schuett and spent months literally pleading for payment.²⁵⁶ Schuett strung her along with an email promising payment, then cut off all communication, forcing Kvanbeck to obtain a conciliation court judgment, which Schuett has failed to satisfy.²⁵⁷ While Schuett asserted in cross examination that he was prevented from paying Kvanbeck as part of a prohibition on fee-splitting for insurance adjusters, he never obtained authorization from Zuelke to hire Kvanbeck; he contracted directly with Kvanbeck for her services; and he never advised Kvanbeck or Zuelke of such prohibition or Zuelke's obligation to pay the bill. Accordingly, Schuett's assertion is untenable.

Schuett had the opportunity to dispute the claims made by Johnson and Kvanbeck in court and either defaulted (in Kvanbeck's case) or did not prevail (in Johnson's case).²⁵⁸ The fact that Schuett hired these individuals to assist with his adjustment of claims and then refused to compensate them for their work, especially in light of judgments totaling over \$786,000 owed to other parties, evidences a pattern of dishonest, untrustworthy, and financially irresponsible practices rendering Respondents unqualified to act as insurance adjusters.

Count IV: False Statements and Representations to Clients

The Department asserts that Respondents made false statements to the Oliviers regarding Respondents' purported diligence in pursuing the Olivier's claims, as well as false representations to Kahnke regarding the availability of additional rental insurance

²⁵⁵ Test. of B. Johnson; Test. of C. Kvanbeck; Test. of P. Norcia.

²⁵⁶ Test. of C. Kvanbeck.

²⁵⁷ *Id.*

²⁵⁸ Ex. 18; Ex. 15 at Doc. No. 000503.

coverage.²⁵⁹ However, only the representations to Kahnke were substantiated by a preponderance of the evidence.

With respect to the Oliviers, Schuett was retained on October 7, 2010.²⁶⁰ State Farm documents evidence that Schuett made contact with State Farm on November 1, November 3, November 4, and several times on November 9, 2010.²⁶¹ Apparently Olivier was not aware of this fact. Thus, when Schuett stated in an email to Olivier that he was “working diligently” with State Farm, such statement was not necessarily a false representation.²⁶² While it may not have been timely enough for Olivier, the fact that Schuett was working on the claim was not necessarily false.

With respect to representations made to Kahnke, Kahnke testified that Schuett represented to him that although Kahnke Brothers was accepting payment for three months of storage in the settlement, Kahnke Brothers would be entitled to additional rental coverage, if the rebuilding process took longer than expected.²⁶³ In the end, by accepting the insurance check, Kahnke Brothers was estopped from seeking recovery for the additional three months of storage that Kahnke Brothers ultimately required.²⁶⁴ It is possible that this was merely a miscommunication between Schuett and Kahnke. However, because Kahnke’s testimony was not rebutted, it stands as the only evidence with respect to this fact. Thus, the Department has narrowly established its burden with respect to this claim.

***Count V: Cancellation of Bond
and
Count VI: Public Adjusting While Suspended***

The facts are undisputed that Schuett’s \$10,000 bond, required under Minn. Stat. § 42B.041, subd. 3, was cancelled as of June 5, 2011. The failure to renew the bond and its subsequent cancellation would not have been a violation of law but for the fact that after cancellation of the bond, Schuett held himself out as a licensed insurance adjuster on the Chow insurance claim. While Schuett claims he was only acting as a “liaison” or “expert” in the case, his work on behalf of Chow and the representations made to State Farm evidence otherwise.

Respondents entered into an insurance adjuster’s agreement with Chow in February 2011, at a time when Schuett’s insurance adjuster license was valid.²⁶⁵ Proceeding under that agreement, on October 25, 2011 – at a time when Schuett’s license was suspended for failure to renew the bond – Schuett was communicating with State Farm on behalf of Chow, sending State Farm a construction proposal and an engineer’s report, and enclosing a copy of the insurance adjuster agreement with

²⁵⁹ Notice and Order for Prehearing Conference, Count IV.

²⁶⁰ Ex. 12.

²⁶¹ Ex. 14.

²⁶² Ex. 13.

²⁶³ Test. of W. Kahnke.

²⁶⁴ *Id.*

²⁶⁵ Ex. 30 at Doc. No. 000657.

Chow.²⁶⁶ Clearly, Schuett was holding himself out to Chow and/or State Farm as an insurance adjuster at that time. Moreover, in a November 10, 2011 fax to State Farm, Schuett included a printout of his license (deceptively showing an expiration date of January 31, 2012) and falsely claimed that his license became “inactive” due to a state shut-down.²⁶⁷ Such representations were not only misleading, but, indeed, false.

The uncontroverted evidence shows that Schuett held himself out as a licensed insurance adjuster at a time when his license was administratively suspended for failure to maintain the required \$10,000 bond. As a result, Schuett demonstrated untrustworthiness, as well as financial irresponsibility, in the conduct of his insurance business.

Count VII: Public Adjusting Without a License

It is undisputed that State Adjusters is not, and has never been, licensed as a public adjuster. Nonetheless, on numerous occasions after July 1, 2010, State Adjusters held itself out as a licensed public adjuster, including advertising itself as such on its website.²⁶⁸

In 2009, Minnesota Statutes Chapter 72B was substantially revised. As part of those revisions, the definition of “person” was amended to include business entities.²⁶⁹ Thus, whereas before July 1, 2010, only “natural persons” could be licensed as public adjusters; after July 1, 2010, business entities acting or holding themselves out as public adjusters also need a license.²⁷⁰

Schuett apparently contends that he was unaware of the law change in 2010 that required State Adjusters to be licensed. Schuett also asserts, through the cross examination of Norcia, that it is a common practice in the industry for only the individuals performing the insurance adjusting services to be licensed, as opposed to the corporate entity that they are “doing business as.”²⁷¹

Unfortunately for Respondents, ignorance of the law is not a defense. It is, however, in this case, a mitigating factor. Schuett, the only known principal in State Adjusters was, indeed, licensed as a public adjuster and was the only known public adjuster performing services as a public adjuster for the corporate entity. Thus, as far as Respondents’ violations in this action are concerned, this violation, unlike the others, does not appear to be willful or done with intent to deceive.

²⁶⁶ Ex. 30 at Doc. Nos. 000655-000659.

²⁶⁷ Ex. 30 at Doc. No. 000650.

²⁶⁸ Ex. 23.

²⁶⁹ 2009 Minn. Laws Ch. 63 §§ 32-43 and 78.

²⁷⁰ Minn. Stat. § 72B.03, subd. 1 (2008); Minn. Stat. § 72B.02, subd. 2, 4, and 6 (2008); Minn. Stat. § 72b.03, subd. 1 (2010); Minn. Stat. § 72B.02, subds. 2, 6 and 15 (2010).

²⁷¹ See Test. of P. Norcia.

Count VIII: Violation of Iowa Insurance Laws and Failure to Report

The uncontroverted evidence, as presented in the Iowa Summary Cease and Desist Order and Default Order, is that Respondents violated Iowa insurance laws by acting and holding themselves out as licensed insurance adjusters in the State of Iowa without having an Iowa insurance adjuster license.²⁷² There is no evidence that Respondents did not know about these Orders; and based upon the content of the Orders, it appears that the Orders were served upon Respondents.²⁷³ Accordingly, Schuett, as a licensed insurance adjuster, was obligated by Minn. Stat. § 72B.107 to report this administrative action to the Commission within 30 days of final disposition. It is undisputed that no report was made by Respondents to the Commissioner.²⁷⁴

Count IX: False Advertising

The Department bases this claim, primarily, on Respondents' website as it existed on February 16, 2010. The Department asserts that the website, a public advertisement or statement, contains numerous untrue, deceptive, or misleading statements or representations. Notably, the date of review of the website is prior to the effective date of the 2009 revisions to Minnesota Statutes Chapter 72B, which made State Adjusters subject to licensing. Accordingly, the representation that State Adjusters is "licensed" (in February 2010) is not necessarily a willful misrepresentation, given that Schuett, the only public adjuster working as a public adjuster for the business, was, indeed, licensed.

However, because the evidence presented shows that Schuett was the only licensed public adjuster working for the business as a public adjuster,²⁷⁵ the representations that State Adjusters has a "large network of public adjusters" or is a "company of experienced, licensed, and bonded public adjusters" (plural) are material misrepresentations.²⁷⁶ Being a member of a trade association or industry group, whereby other professionals network together, does not provide State Adjusters a basis to represent that it is comprised of multiple licensed adjusters. Consequently, these statements are deceptive and misleading.

In his answers to the Department's discovery requests, Schuett explains that he is Donald Schuett, "doing business as" State Adjusters, as if State Adjusters is merely an assumed name for Donald Schuett.²⁷⁷ This explains why the representations about experience or the value of construction projects estimated are attributed to State Adjusters, as opposed to Schuett. However, the fact remains that both representations are deceptive and misleading.

²⁷² Exs. 24 and 25.

²⁷³ *Id.*

²⁷⁴ Test. of C. Jenkins.

²⁷⁵ Both Johnson and Norcia testified that their work for Public Adjusters was not as licensed public adjusters but, rather, as a public adjuster solicitor (Johnson) or appraiser (Norcia). See Test. of B. Johnson and Test. of P. Norcia.

²⁷⁶ Ex. 22.

²⁷⁷ Ex. 34 at Respondents' Answers to Interrogatory No. 1.

The website refers to “25 years of practical adjusting experience,” not simply practical experience.²⁷⁸ Schuett has not been a licensed public adjuster in Minnesota for 25 years.²⁷⁹ Accordingly, this is technically inaccurate. Also, while there is no way to calculate Schuett’s personal estimating experience, the fact that he attributes his personal experience to State Adjusters is, technically, a misrepresentation and potentially misleading.

The most deceptive part of the website is the four insurance claims that State Adjusters advertises as claims it adjusted. Two of the four claims occurred before Schuett was licensed or State Adjusters was organized, and both claims were Schuett’s personal insurance claims handled by MBL Adjustment Services, Inc.²⁸⁰

Notably, once these issues were brought to Schuett’s attention, the website was substantially revised.²⁸¹ By July 27, 2011, most of these representations had been removed.²⁸² However, State Adjusters continued to hold itself out as a licensed public adjuster.²⁸³ This, again, is reasonably attributable to Schuett’s ignorance of the 2009 law changes requiring State Adjusters to be licensed, and Schuett’s misunderstanding about the difference between assumed names (e.g., Donald Schuett, d/b/a State Adjusters) and corporate entities (e.g., State Adjusters, LLC).

Nonetheless, the Department has met its burden of proof in establishing by a preponderance of the evidence that Respondents made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to their insurance adjuster business, which was untrue, deceptive, or misleading.

***Count X: Untrustworthy, Financially Irresponsible,
or Unqualified to Act as a Licensed Public Adjuster***

It is undisputed that between 2006 and 2009, 27 separate judgments totaling more than \$786,000 were entered against Schuett and/or his business entities.²⁸⁴ This is a substantial sum, and none of these judgments have been satisfied.²⁸⁵

However, it is worth noting that all of the \$786,000+ worth of judgments cited by the Department occurred prior to Respondents’ licensure as a public adjuster; and, except for the judgments obtained by Johnson and Kvanbeck, none relate to Schuett’s work as a public adjuster.²⁸⁶

²⁷⁸ Ex. 22 at Doc. No. 000016.

²⁷⁹ Test. of C. Jenkins.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Ex. 23.

²⁸³ *Id.*

²⁸⁴ Ex. 26.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

Nonetheless, given the substantial number of judgments and the collective amount of the judgments, the unsatisfied judgments do demonstrate that Schuett is financially irresponsible and, when viewed in the totality of the evidence, is untrustworthy and otherwise unqualified to act as a licensed insurance adjuster.

Conclusion

It is apparent that Schuett is skilled at obtaining favorable insurance settlements and maximizing recoveries for his clients. While it is tempting to view the plethora of evidence presented by the Department as “piling on” charges, the totality of the evidence shows a licensed insurance adjuster who, in pursuit of his own convenience and financial gain, fraudulently misappropriated insurance proceeds, abandoned his clients in precarious situations, and demonstrated a pattern of deceptive, unprofessional, untrustworthy, and financially irresponsible business practices. Consequently, it is hereby recommended that the Department impose appropriate sanctions against Respondents, pursuant to Minn. Stat. § 45.027, subds. 6 and 7.

A. C. O.